48

195

File No. 863/48

P.W. DEPARTMENT

B CLASS

W BRANCH

Subject:—

Merchant Seamen Litigation Rule

Training of -

F.L.K.J. - 1948

V

File No. 863/48 — W

Etd. Scott. Slip. 24 A

G.R., G.D., No. 2408, dated 22-6-22.]

Correspondence

DOCKET SHEET

Subject :—

File No. 863/48

P.W. **DEPT.**

W. **BRANCH.**

References :—

Main file is sent to Maharastra

Date.	To whom sent.	Notes and instructions.

No. 18-M.11(8)/43.
Government of India.
Department of Commerce.
New Delhi, the 8th March 1947.

From

M.A.Ghani, Esquire, B.A.(Hons.),
Assistant Secy. to Govt. of India.

To

The Chief Secy. to the Govt. of Punjab, Bombay, the U.P., Bihar, Bengal, Madras, the C.P.& Berar, Sind & N.W.F.P.

Subject:- Framing of Merchant Seamen (Litigation) Rules.

....

Sir,

I am directed to enclose a draft of the Merchant Seamen (Litigation) Rules proposed to be framed by the Central Government under section 10 of the Merchant Seamen (Litigation) Act, 1946 (XXI of 1946).

2. The Government of India would be obliged if the views of the Provincial Government together with the views of the* local High Court/@Chief Court/%Judicial Commissioner on the draft Rules are furnished to them at an early date.

*Not to Si-nd & N.W.F.P.
@ Sind
% N.W.F.P.

3. Draft rule 4 is referable to section 10(b) of the Act which contemplates that different periods may be prescribed with reference to different classes of suits. It has been suggested that there may be certain classes of suits wherein the postponement to the extent provided by the rule may not be in the interests of the serving seamen and a shorter adjournment at the direction of the court would meet the case. *The High Court/@Chief Court /%Judicial Commissioner's attention may be invited to this point also, for favour of its/his views and suggestions in the matter.

4. Section 10(c) of the Act lays down that the rules to be framed under the Act may provide for the conditions subject to which damages may be awarded under sub-section (1). ---

No. 18-M.II(8)/43.
Government of India.
Department of Commerce.
New Delhi, the 8th March 1947.

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2. The Government of India would be obliged if the views of the Provincial Government together with the views of the* local High Court/@Chief Court/%Judicial Commissioner on the draft Rules are furnished to them at an early date.

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@ Sind
% N.W.F.P.

3. Draft rule 4 is referable to section 10(h) of the Act which contemplates that different periods may be prescribed with reference to different classes of suits. It has been suggested that there may be certain classes of suits wherein the postponement to the extent provided by the rule may not be in the interests of the serving seamen and a shorter adjournment at the direction of the court would meet the case. *The High Court/@Chief Court /%Judicial Commissioner's attention may be invited to this point also, for favour of its/his views and suggestions in the matter.

4. Section 10(c) of the Act lays down that the rules to be framed under the Act may provide for the conditions subject to which damages may be awarded under sub-section (1) ---

(1) of section 7 of the Act and the amount of such damages. The Government of India would be grateful for the views and suggestions of the "High Court/@Chief Court/ %Judicial Commissioner as to the proper conditions to be prescribed in that behalf. In this connection it may be mentioned that the provision, relating to award of damages in sub-section (1) of section 7 of the Act was inserted by the Selected Committee of the Legislative Assembly to whom the Bill was referred, and in para 4 of their Report, the Committee observed as follows:-

"We consider that a party who deliberately conceals knowledge which he is required under section 3 to disclose should not go unsgathed. We, therefore, propose an addition to clause 7(1) to enable the court, when setting aside a decree or order under that sub-clause to award damages in such cases. We think however, that the exercise of this power should be subject to rules, and accordingly propose an additional sub-cluase in clause 10."

5. The Central Government is also required to specify by notification in the Gazette of India areas and circumstances in which proviso to section 8 of the said Act will not be applicable. This provisd was also inserted by the Select Committee who observed as follows:-

"We further consider that proceedings to enforce a right of pre-emption should in the matter of limitation be treated in like manner to that provided in section 11 of the 1925 Act, and we propose amending clause 8 of the Bill accordingly".

The reference by "1925 Act" is to the Indian Soldiers (Litigation) Act, 1925, but the words "except in such areas and in such circumstances as the Central Government may,---

may, by notification in the official gazette, specify in this behalf" appearing in section 8 of the Merchant Seamen (Litigation) Act, 1946 do not appear in section 11 of Indian Soldiers (Litigation) Act, not were there any similar form of words in that Act originally. However, by section 2 of Ordinance No. XIV of 1944, the words "(except in such areas, and subject to such modifications in any) as the Central Government may" etc., were inserted. It seems obvious that the Select Committee adapted their amendment of section 8 of the Merchant Seamen (Litigation) Act from this precedent. Shortly before the Merchant Seamen (Litigation) Act was finally passed, however, the Indian Soldiers (Litigation) Act was amended by Act No. XVIII of 1946, and the words which have been placed in square brackets above were deleted and replaced by the words "except where the said right accrues in such circumstances, and is in respect of agricultural and village immovable property situated in any such area". It appears to the Government of India that the Central Government should exclude from the scope of the provisdn to section 8 of the Merchant Seamen (Litigation) Act suits, appeals or applications instituted or made with the object of enforcing a right of pre-emption where such right accrues in respect of agriculture and village immovable property but they consider that such exception should be applicable to cases of the above nature throughout British India and not only in any particular area. The Government of India would be glad to be furnished with the views of the *High Court/ @Chief Court/%Judicial Commission on these points also along with the observations of the Provincial Government thereon.

I have the honour to be,
Sir,
Your most obedient servant,
Sd/-
Asstt. Secy. to the Govt. of India.

NOTIFICATION.
Merchant Shipping.

In exercise of the powers conferred by section 10 of the Merchant Seamen (Litigation) Act, 1946 (XXI of 1946), the Central Government, after consulting the High Courts concerned, is pleased to make the following rules, namely:

1(1) These rules may be called the Merchant Seamen (Litigation) Rules, 1948.

(2) All words used herein and defined in the Act shall be deemed to have the meanings respectively attributed to them by the Act.

2(1). The certificate given by a Collector under section 4 of the Act shall be in Form A of the Schedule.

(2) Any person may, on behalf of any serving seaman who is a partly to any proceedings pending before any court, apply by swearing an affidavit or otherwise, to the Collector of the District in which the seman ordinarily resides or has property, asking for the grant of a certificate under section 4 of the Act. The Collector may thereupon make such enquiries as he deems fit and may, if satisfied, grant the requisite certificate.

3. The notice given by the Court under section 5 of the Act shall be in Form B of the Schedule and the certificate of the Shipping Master under section 6 of the Act, shall be in Form C of the Schedule.

4. The period for which proceeding shall be postponed under sub-section (1) of section 6 shall be the period ending with the date specified by the Shipping Master in his certificate to be the date after which the seaman is likely to cease to be a serving seaman. Provided that the Court shall not resume the proceedings after the said date unless it is satisfied by a certificate of the Shipping Master ---

Master or otherwise, that the seamen has ceased to be a serving seaman.

5. The court may, on its own motion or on the application of a person who is a party to the proceedings postponed under sub-section (1) of section 6, call for a fresh report from the Shipping Master as to whether the seaman has ceased to be a serving seaman; and if it is satisfied by such report or otherwise, that the seaman has ceased to be a serving seaman, it may resume the proceedings notwithstanding that the period specified in rule 4 has not expired.

SCHEDULE.

FORM A.
(Vide Rule 2)

From

The Collector,
District

To

No. dated

Sir,

I hereby certify that I have reason to believe that ..... son of ..... of village who is a seaman ordinarily residing in my district and who is a party in * ..... now pending before % ..... is unable to appear therein.

is a serving seaman.

I have the honour to be,
Sir,
Your most obedt.servant,
Collector.

*Here enter suit,appeal,appln.or other proceeding.
%Here enter name of Court.

Note:-(1) This Certificate should be sent by registered post or by hand, an acknowledgement being taken.

(2) It should be addressed, in the case of the Federal Court or the High Court to the Registrar, and in the case of the Financial Commissioner, to the Clerk of the Court, and in other cases to the presiding officer of the court.

.....

FORM B
(Vide Rule 3)

In the Court of .....

Suit No. *..... of 19 ....

To .....

The Shipping Master,

.....

.....

.....

No. dated

Sir,

WHEREAS the Collector of the District has certified / this Court has reason to believe

that seaman ..... son of ..... village ..... who is a serving seaman / is a party to the above proceedings pending before this Court unable to appear therein

OR

WHEREAS it appears to this Court that ..... son of --- village ..... being a seaman, though ..... not a party to the proceedings above mentioned, is materially concerned in the outcome of the proceedings and that ..... his interests are likely to be prejudiced by his inability ..... to attend;

Notice is, therefore, hereby given to you under ..... section 5 of the Merchant Seamen (Litigation) Act, 1946 (XXI of 1946), that the above-mentioned proceedings have been suspended,---

*Here enter title of suit or proceedings.

suspended, and that if within two months of the receipt of this notice by you, you fail to certify that the seaman is a serving seaman, this Court will, if it thinks fit, continue the proceedings.

I have the honour to be,
Sir,
Your most obedient servant,

.....Judge
Subordinate Judge
Registrar.

.....

F O R M C.
(Vide Rule 3).

No. ..... dated, the .....

From
The Shipping Master,

To

Subj:- Seaman ..... son of .....
connected with Suit Nd. .....
of -.....

Sir,

I have the honour to acknowledge receipt of your Notice No. ---------- dated ---------- under Section 5 of the Merchant Seamen (Litigation) Act, 1946 (XXI of 1946), and I do hereby certify that Seaman ------ son of ---------- village ---------- is for the time being a serving seaman but is likely to cease to be a serving seaman but is likely to cease to be serving seaman after .....

(insert date here)

is not for the time being a serving seaman..

I have the honour to be,
Sir,
Your most obedt.servant,
Shipping Master.

Note:-(1) This Certificate should be sent by registered post or by hand, an acknowledgement being taken.

(2) It should be addressed, in the case of the Federal Court or the High Court, to the Registrar, and in the case of the Financial Commissioner, to the Clerk of the Court, and in other cases to the presiding officer of the Court.

.....

Home Department.

Please see P. & S.D. o.n. dated the 24/3/47.

2. The item No. 27 of the subjects allotted to the H.D. relates to Bills and Acts other than those pertaining to subjects dealt with in other Deptts. It is therefore necessary to see whether the subject matter of these papers pertains to any other Department of the Secty. Please see in this connection item Nos. 25 and 53 of the subjects allotted to the P. & S.D. It will be seen that the subject of "Merchant Shipping" which is the subject matter of the papers under consideration will come under the above items, which are for the P. & S.D. to deal with. Besides this Department has no papers regarding the Act under which the rules in question are to be framed. It appears that the Deptt. which dealt with the Act when it was in Bill stage must also deal with the rules proposed to be framed under it.

------These papers may be returned to P. & S.D. with this note.

Id/-
3/4/47.
Id/-
3/4/47.
Id/-...A.S.....
3/4/47.

U.O.R. to P. and S.D. dt. 3/4/47.

P.& S.D.
B.

P.& S.D.
B.

The endorsement at page 15 may issue in the first instance.

As H.D. has declined, I think this matter should not be dealt with in E.Branch (Labour) as it concerns "seaman's welfare."

Id/-

9/4/47.

I understand B branch deals with shipping. This is really litigation. Directly, I feel that Labour has willing to do with it, it might as well take up debt adjustment Boards!

A.S Id/-
U.S 16/4

Pl. issue the letter at page 15 ante equally the case has already been sufficiently delayed.

Id/-

16/4/47.

.....

No. 0/8815-B.
Political and Services Department.
Bombay Castle, 17th April 1947.

From

Sir Ivon Taunton, C.I.E., I.C.S.,
Chief Secy. to the Govt. of Bombay,
Political and Services Department.

To

The Registrar, High Court, Appellate Side, Bombay.

Sir,

I am directed to forward copies of a letter from the Government of India, Department of Commerce, No. 18-M.II (8)/43, dated the 8th March 1947 and its accompaniments and to request that the views and suggestions of their Lordships may kindly be communicated to this Department at an early date.

2. I am to add that the Merchant Seamen (Litigation) Act, 1946 was published in the Bombay Government Gazette, dated the 13th May 1946 Part IV-A.

Your obedient servant,

Id. 16/4/47.
For Chief Secy. to the Govt. of Bombay,
Political and Services Department.

Id/-
16/4/47.

.....

From

The Registrar,
His Majesty's HIGH COURT of Judicature
(Appellate Side), Bombay.

To
The Chief Secy. to the Govt. of Bombay,
Political and Services Department.

No. X. 0109/47
Date 12/5/1947.

Sub:& Ref.:- Merchant Seamen (litigation)Act, 1946
Framing of rules under the ---

Your letter No. 0/8815-B dated the 17th April 1947.

Sir,

I am directed by the Honourable the Chief Justice and Judges to say that Their Lordships have no remarks to offer on the draft rules proposed to be framed by the Central Government under section 10 of the Merchant Seamen (litigation) Act, 1946. They can offer no remarks on the first point, as the Government of India have given no indication as to what suits they have in mind for which the period of postponement provided by the Rule would operate as a hardship to a Seaman.

The second and the third points, viz., the conditions to be prescribed for awarding of damages under sub-section (1) of section 7 of the Act and the question of prescribing exceptions to the operation of the proviso to section 8 of the Act, are questions of policy on which it is not usual for Their Lordships to express any opinion.

Your obedient servant,
Sd/-
(S.H.Belavadi)
For Registrar.

.....

Office of the R.I.A.

Under section 10 of Act XXI of 1946 (the Merchant Seamen (Litigation) Act, 1946), the rules are to be made primarily after consulting the High Courts concerned. On draft rule 4 the High Court has offered no remarks, in the absence of indication as to what suits the Government of India have in mind for which the period of postponement provided by the rule would operate as a hardship to a seaman. In the absence of such indication, it will not be possible for the R.I.A. also to make any suggestions. It would be better for the Government of India, in consultation with Seamen's Associations, if necessary, to define first what classes of suits they have in view for providing different periods of postponement.

A

2. As regards paragraphs 4 and 5 of the letter from the Government of India the observations of the Provincial Govt. are invited only upon the proposal to exclude from the scope of the proviso to section 8 suits, appeals or applications instituted or made with the object of enforcing a right of preemption where such right accrues in respect of agricultural and village immovable property and that such exception should be made applicable throughout the Dominion. The expression "village immovable property" has no doubt been used in section 11 of the Indian Soldiers (Litigation) Act, 1925; but it must be confessed that it is not a happy expression. So far as Bombay is concerned, the word "village" is defined in the Bombay Land Revenue Code to include a town or city and all the land belonging to a village, town or city. This definition is so wide that land almost everywhere in the Province would come within the purview of the exception, and would thus be excluded from the scope of the proviso so that the substantive section would become applicable in the case of ---

of suits etc. for pre-emption in respect of practically all agricultural land. It is a matter for Government's x consideration whether this is the true intention, or whether the section should be made applicable in such suits etc. relating to ~~xxxx~~ property situate in a village as understood in popular parlance. B

Sd/- 13/1/48.
Remembrancer of Legal Affairs.

U.O.R. to P. and S.D.No. 446, dt. the 14/)an 1948.

P. and S.D.
B.

Submitted with reference to the H.P.M's note dt. the 20th June 1947.

2. It is for orders as to what remarks should be forwarded to the Govt. of India on the last page of their letter at page 1 ante.

Id/-
9/2/48. 'A' in para 1 of the R.L.A's opinion above may be pointed out to the Govt. of India.

2. 'B' in para 2 of the R.L.A's opinion seems more appropriate and R.D. may see u.o. remarks, if any.

Id/-
11/2/48.

U.R. to the R.D. dt. the 20/2

.....

REVENUE DEPARTMENT.

These papers have been referred to this Department with reference to para 5 of the Government of India, Department of Commerce letter at page 1 ante. The remarks of this Government are invited on the proposal to exclude from the scope of the proviso to sec. 8 of the Merchant Seamen (Litigation) Act, 1946, suits, appeals and applications instituted or made with the object of enforcing a right of pre-emption where such right accrues in respect of ---

of agricultural and village immovable property. As stated by the R.L.A. the word "Village" has been defined in the Bombay Land Code to include a town or city and all the land belonging to a village, town or city. This Department may agree with R.L.A. that the above definition of the word "Village" is so wide that land almost everywhere would come within the purview of the exception and would be excluded from the scope of the provisd with the result that the substantive section would become applicable in the case of suits etc. for pre-emption in respect of practically all agricultural land. This does not seem to be the intention of Government. The papers may be returned to the P. and S.D. with an expression of concurrence in the R.L.A's opinion. That Deptt. may presumably take action as suggested at 'B' of the R.L.A.'s opinion.

Id/-
3/3/48

Id/-
5/3

A.U/5

U.O.R.* to P. and S.D. dt. the 13/3/48.

*With copy of Act.

.....

P.K.M.

No. 2665/46/8982-B.
P.& S.D.
B.C.12th March 1948.

To

The Secy. to the Govt. of India,
Minister of Commerce.

Sub:- Framing of Merchant Seamen(litigation)Rules.

Sir,

I am directed to refer to Mr.Ghani's ~~xx~~ letter No. 18-M-II.(8)/34 dt. 8th March 1947. on the also one subject and two forward here with a copy of a letter from the Registrar H.C.A.S.,Bombay No. X 9109/47 dt. the 12th March 1947. This Govt. has no remarks ~~xx~~ to offer on the draft rule ~~x~~ of th proposed Merchant Seamen (litigation) Rules vide the reasons stated in para 1 of the Registrar letters). It is, however, suggested that the Govt. of I. may consult, if necy. the Seamen's Associations, ~~definx~~ define first what classes of suits they have in view for providing different periods of postponement.

2. As regards paras 4 and 5 of the letter under reply, it is presumed that the ~~Association~~ observation of the Govt. are invited only on the proposal to exclude from the scope ofx the proviso to section 8 suits, appeals on application instituted ~~on~~ made with the object of empowering a right of pre~~e~~mption where such rights accrues in ~~xxxxxx~~ respect of agricultural and village immovable property and that such exception should be made applicable throughtoutxx the Dominion. The expression "village immovable property" has no doubt been used in Section 11 of the India Soldiers (litigation) Act, 1925 but it does not seem a happy expression x so for as Bombay is concerned. The word "village" ~~xx~~ is defined in the Bombay land Revenue ~~xxxx~~ Code to include a ~~xxxxxxx~~ town or city and all the ~~xxxx~~ land belonging ----

ing to a village, town, or city. This defination is too vide and this Govt. considers that section 8 should be made applicable in Govt. suits, etc. relating to prpperty situated in a village or understood in population parlance.

3. This Govt. has no other remarks to offer.

Id/-
27/3/48.
4.05
Ch. Secy. to the Govt. of
Bombay.

.....

rMoriday